

JUDGE PRESKA

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

07 CIV 6717

Docket No.:

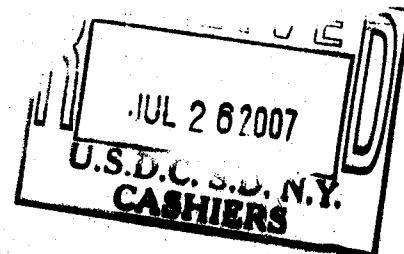
-----X  
ALLIANZ INSURANCE COMPANY a/s/o  
MERCEDES-BENZ CREDIT CORPORATION,

Plaintiff,

-against-

MILIVOJE MILOSEVIC,

Defendant.  
-----X



**COMPLAINT FOR DAMAGES**

NOW COMES Plaintiff, ALLIANZ INSURANCE COMPANY a/s/o  
MERCEDES-BENZ CREDIT CORPORATION, by and through its attorneys, CLAUSEN  
MILLER P.C., as and for its Complaint against Defendant Milivoje Milosevic, states as follows:

**JURISDICTION AND PARTIES**

1. At all relevant times, Plaintiff, Allianz Insurance Company was a domestic corporation, incorporated in the State of California with its principal place of business at 3400 Riverside Drive, City of Burbank in the State of California.
2. At all relevant times, Plaintiff was in the business of issuing insurance policies and authorized to do so in all applicable States.
3. At all relevant times, Plaintiff's subrogor, Mercedes-Benz Credit Corporation ("MBCC"), was a domestic corporation, incorporated and having its principal place of business in the State of Connecticut.
4. At all relevant times, MBCC was in the business of issuing automobile lease agreements and was authorized to do so in all applicable States.

5. MBCC merged with and into Chrysler Financial Company on or about October 26, 2001.
6. On or about December 1, 2001, Chrysler Financial Company became Daimler Chrysler Services North America ("Daimler").
7. At all relevant times, MBCC was a division of the insured of Plaintiff.
8. MBCC actually issued the automobile lease agreement in the present case.
9. Upon information and belief, Defendant Milivoje Milosevic is an individual residing at 575 Main Street, Manhattan, New York 10044.
10. Jurisdiction is vested in this Court, pursuant to 28 U.S.C. Section 1332, as there exists full and complete diversity of citizenship between the parties, and the amount in controversy, exclusive of costs and interest, exceeds \$75,000.00.

#### FACTS

11. At all relevant times, Plaintiff provided MBCC with insurance coverage, pursuant to Policy Number CGL 2000176.
12. On March 26, 2001, Defendant entered into a Motor Vehicle Lease Agreement with Mercedes-Benz Manhattan, Inc., located at 536 West 41st Street, New York, New York 10036.
13. Defendant leased a 2001 Mercedes Benz E 430 W, bearing VIN of WDBJF70JX1B216964 (hereinafter referred to as the "Vehicle") for thirty-nine (39) months.
14. At all relevant times, Mercedes-Benz Manhattan, Inc. was one of MBCC's authorized Dealers, entitling Mercedes-Benz Manhattan, Inc. to enter into a Motor Vehicle Lease Agreement on behalf of MBCC.
15. Mercedes-Benz Manhattan, Inc. entered into a written lease with Defendant on behalf of MBCC.

16. A copy of the Motor Vehicle Lease Agreement (hereinafter referred to as the "Lease") is annexed hereto as Exhibit A.

17. Paragraph 23 of the Lease provided the following:

"If you are subjected to any claims, losses, injuries, expenses, or costs related to the use, maintenance, or condition of the vehicle, I will pay all of your resulting costs and expenses, including attorney's fees."

18. On or about May 13, 2002, while Defendant was operating the Vehicle, he was involved in a motor vehicle accident (hereinafter referred to as the "Accident").

19. Specifically, the Accident involved Defendant driving the vehicle into a twelve (12) year old girl, Ms. Devika Phagoo.

20. As a result of the Accident, Ms. Phagoo, by her father as guardian, and her father, individually, commenced a legal action against Defendant, Milivoje Milosevic and MBCC, in the State of New York, County of Kings, index number 9360/05 (hereinafter referred to as "Personal Injury Litigation").

21. The Personal Injury Litigation was settled for the total sum of \$500,000.00 (hereinafter referred to as the "Personal Injury Settlement").

22. Plaintiff paid \$250,000.00 of the Personal Injury Settlement to Ms. Phagoo.

23. Plaintiff paid \$56,927.87 in defense costs and expenses for the Personal Injury Litigation.

24. Pursuant to Paragraph 23 of the Lease, Plaintiff demanded reimbursement from Defendant.

25. Defendant has refused to reimburse Plaintiff.

**AS AND FOR A FIRST CAUSE OF ACTION IN BREACH OF CONTRACT**

26. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs number "1" through "25" with the same force and effect as though fully set forth herein.

27. Defendant lawfully executed the Lease and contractually agreed to the terms and conditions of the Lease.

28. The Lease specifically and unambiguously provided that should MBCC and/or Plaintiff, by way of subrogation, become "subjected to any claims, losses, injuries, expenses, or costs related to the use, maintenance, or condition of the [Vehicle, Defendant] will reimburse [Plaintiff] for all [its] resulting costs and expenses, including attorney's fees."

29. As stated above, Plaintiff, by way of subrogation, was subjected to a loss -- Plaintiff's \$250,000.00 settlement payment for the Personal Injury Statement and its defense costs and expenses of \$56,927.87 -- as a result of Defendant's use of the vehicle.

30. Plaintiff demanded, pursuant to Paragraph 23 of the Lease, that Defendant reimburse Plaintiff for its losses as a result of Defendant's use of the Vehicle.

31. Defendant has refused to reimburse Plaintiff.

32. Defendant's refusal constitutes a direct material breach of the Lease/contract.

33. As a direct and proximate result of Defendant's breach of its contractual duties, Plaintiff has incurred extensive financial loss, described above, and Defendant is liable for such damages and loss.

WHEREFORE, Plaintiff demands judgment against Defendant for the total amount of its damages, Three Hundred Six Thousand Nine Hundred Twenty-Seven Dollars and Eighty-Seven Cents (\$306,927.87), together with interest, legal fees, costs and such other relief as this Court deems proper.

AS AND FOR A SECOND CAUSE OF ACTION IN INDEMNIFICATION

34. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs number "1" through "33" with the same force and effect as though fully set forth herein.

35. As stated above, the Lease required Defendant to indemnify Plaintiff in the event that a payment was made by Plaintiff as a result of Defendant's use of the Vehicle.

36. Plaintiff made a payment of \$250,000.00 and \$56,927.87 in defense costs and expenses, as a result of Defendant's use of the Vehicle.

37. Defendant is required to indemnify Plaintiff, pursuant to the Lease and common law.

WHEREFORE, Plaintiff demands judgment against Defendant for the total amount of its damages, Three Hundred Six Thousand Nine Hundred Twenty-Seven Dollars and Eighty-Seven Cents (\$306,927.87), together with interest, legal fees, costs and such other relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues which are so triable.

Dated: 7/26/07

Respectfully submitted,

CLAUSEN MILLER P.C.

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